

REMARKS/ARGUMENTS

This case has been carefully reviewed and analyzed in view of the Office Action dated 14 March 2006. Responsive to that Office Action, Claim 7 is now amended for further prosecution with the other pending Claims. With such amendment of Claim 7, there is a further clarification of the pending Claims' recitations.

In the Office Action, the Examiner rejected Claims 7-10, 13 and 14 under 35 U.S.C. § 102(b) as being anticipated by the Burrell, et al. reference. The Examiner also rejected Claims 7-15 under 35 U.S.C. § 103(a) as being unpatentable over Burrell, et al. in view of the Nieh, et al. reference. In setting forth the latter rejection, the Examiner acknowledged that Burrell, et al. fails to disclose sputtering of the first and second metal targets at the claimed voltage ranges and current ranges as well as a sputtering time range from 3-13 minutes. The Examiner, however, cited Nieh, et al. for disclosing such and concluded that it would have been obvious to one of ordinary skill in the art to have incorporated as much into the Burrell, et al. method, since the Nieh, et al. reference disclosed that determination of the proper power levels to be used for magnetron sputtering of various metals can be found in technical literature.

As newly-amended independent Claim 7 now more clearly recites, Applicant's method for forming an anti-microbial sanitary ware includes the step of "generating metal particles of the second metal having a size of less than 100

nanometers and dispersing said metal particles in the protective layer.” The size and the charge of the metal particles dispersed within the protective layer furthers destruction of the bacteria and thus enhances the overall anti-microbial effect.

The full combination of these and other features now more clearly recited by Applicant’s pending Claims is nowhere disclosed by the cited references. Note in this regard that while the Burrell, et al. reference discusses in detail the thickness of the metal coating in terms of microns and varies the thicknesses dependent on the “degree of metal ion release needed over a period of time”, the reference remains silent with respect to the size of the “second metal.” Furthermore, Burrell, et al. discloses layers that are sequentially deposited where the inert metal(s) should be discontinuous, or, for example as “islands within the anti-microbial metal matrix” and the final ratio of the anti-microbial metal to the inert metal should be greater than about 0.2, however, the reference does not contemplate a particular size of “inert metal” nor the dispersion of such within the protective layer.¹

Thus, as the reference fails to disclose or suggest generating the metal particles of the second metal that are a size of less than 100 nanometers and dispersing those metal particles within the protective layer, it cannot anticipate the invention as now claimed.

¹ Language in Burrell et al., such as, “islands within the anti-microbial metal matrix”, and use of the term “layer[s]” indicates layering of the metals whereas Applicant teaches dispersing the nanometer sized second metal particles in the protective layer.

Given such deficient teachings of the primarily-cited Burrell, et al. reference, the teachings of the secondarily-cited Nieh, et al. reference are found to be quite ineffectual to the present patentability analysis. The Examiner merely cited Nieh, et al. for disclosing that the determination of proper power levels to be used for magnetron sputtering of various metals can be found in technical literature. The Reference, however, fails to remedy the deficiencies of the Burrell, et al. reference.

It is respectfully submitted, therefore, that the cited Burrell, et al. and Nieh, et al. references, even when considered together, fail to disclose the unique combination of features now more clearly recited by Applicant's pending Claims for the purposes and objectives disclosed in the subject Patent Application.

It is now believed that the subject Patent Application has been placed in condition for allowance, and such action is respectfully requested.

Respectfully submitted,
For: ROSENBERG, KLEIN & LEE



Rajiv S. Shah
Registration #56,247

Dated: 7/12/2006

Suite 101
3458 Ellicott Center Drive
Ellicott City, MD 21043
(410) 465-6678
Customer No. 04586